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VIA CM/ECF
Honorable Claudia A. Wilken
United States District Court
Northern District of California

Re: *In Re: College Athlete NIL Litigation;* Civil Action No.: 4:20-CV-03919-CW

Your Honor,

This response is to a remaining issue raised by the Court when Defendants addressed the Title IX objections stating, "the schools are not going to make the payments," referencing the past damages settlement. The Court asked for confirmation that the schools "are not involved" with those payments and later stated that "[i]f the schools are doing it, then we do have to worry about Title VII - -I mean Title IX." Final Approval Hearing Transcript, ECF No. 797 at 197:8-10. The Court's suggestion that "if the schools are doing it, then we do have to worry about Title [IX]" raises two continuing problems that have not been addressed.

First, the Athletic Services Compensation payments in the past damages settlement would have come *directly from the schools.* This is not in dispute yet somehow 90% of those damages are being paid to male athletes as though Title IX did not exist in the "but-for" world.

Second, as explained at length in our objection, even if there was a mythical "but-for" world where a school's broadcast money was retained by the conferences (or NCAA) who then made the "BNIL" payments directly to athletes, Title IX would still apply to those payments. Where a school has ceded controlling authority over a program to another entity, such as payment of benefits, that entity is going to be governed by Title IX for those payments. *See Williams v. Bd. of Regents of Univ. Sys. of Georgia*, 477 F.3d 1282, 1294 (11th Cir. 2007). The parties could never have skirted Title IX in the "but-for" damages world just by re-routing payments through the conferences, or the NCAA, or any other third party.

This issue is **not** about general equities or righting some historical wrong. This is a 1.1-billion-dollar error in calculation of damages that must be addressed and to date, neither the Parties nor the Court have done so.

Sincerely,

s/ John C. Clune

John C. Clune
Ashlyn L. Hare